

109TH CONGRESS  
1ST SESSION

# H. R. 3501

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal financial information, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2005

Ms. CARSON introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Government Reform and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To require financial institutions and financial service providers to notify customers of the unauthorized use of personal financial information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Access  
5 Rights Defense Act (CARD) of 2005”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions shall apply:

1           (1) AGENCY.—The term “agency” has the same  
2           meaning given such term in section 551(1) of title  
3           5, United States Code.

4           (2) BREACH OF SECURITY OF THE SYSTEM.—  
5           The term “breach of security of the system”—

6                   (A) means the compromise of the security,  
7                   confidentiality, or integrity of data that results  
8                   in, or there is a reasonable basis to conclude  
9                   has resulted in, the unauthorized acquisition of  
10                  personal information maintained by the person  
11                  or business; and

12                  (B) does not include good faith acquisition  
13                  of personal information by an employee or  
14                  agent of the person or business for the purposes  
15                  of the person or business, if the personal infor-  
16                  mation is not used or subject to further unau-  
17                  thorized disclosure.

18           (3) PERSON.—The term “person” has the same  
19           meaning given such term in section 551(2) of title  
20           5, United States Code.

21           (4) PERSONAL INFORMATION.—The term “per-  
22           sonal information” means an individual’s last name  
23           in combination with any 1 or more of the following  
24           data elements:

25                   (A) Social Security number.

1 (B) Driver’s license number or State iden-  
2 tification number.

3 (C) Account number or credit or debit card  
4 number, or, if a security code, access code, or  
5 password is required for access to an individ-  
6 ual’s account, the account number or credit or  
7 debit card number, in combination with the re-  
8 quired code or password.

9 (5) SUBSTITUTE NOTICE.—The term “sub-  
10 stitute notice” means—

11 (A) conspicuous posting of the notice on  
12 the Internet site of the agency or person, if the  
13 agency or person maintains a public Internet  
14 site; and

15 (B) notification to major print and broad-  
16 cast media, including major media in metropoli-  
17 tan and rural areas where the individual whose  
18 personal information was, or is reasonably be-  
19 lieved to have been, acquired resides. The notice  
20 to media shall include a toll-free phone number  
21 where an individual can learn whether or not  
22 that individual’s personal data is included in  
23 the security breach.

24 **SEC. 3. DATABASE SECURITY.**

25 (a) DISCLOSURE OF SECURITY BREACH.—

1           (1) IN GENERAL.—Any agency, or person en-  
2           gaged in interstate commerce, that owns, licenses, or  
3           collects data, whether or not held in electronic form,  
4           containing personal information shall, following the  
5           discovery of a breach of security of the system main-  
6           tained by the agency or person that contains such  
7           data, or upon receipt of notice under paragraph (2),  
8           notify any individual of the United States whose per-  
9           sonal information was, or is reasonably believed to  
10          have been, acquired by an unauthorized person.

11          (2) NOTIFICATION OF OWNER OR LICENSEE.—  
12          Any agency, or person engaged in interstate com-  
13          merce, in possession of data, whether or not held in  
14          electronic form, containing personal information that  
15          the agency does not own or license shall notify the  
16          owner or licensee of the information if the personal  
17          information was, or is reasonably believed to have  
18          been, acquired by an unauthorized person through a  
19          breach of security of the system containing such  
20          data.

21          (3) TIMELINESS OF NOTIFICATION.—

22                 (A) IN GENERAL.—All notifications re-  
23                 quired under paragraph (1) or (2) shall be  
24                 made without unreasonable delay following—

1 (i) the discovery by the agency or per-  
2 son of a breach of security of the system;

3 (ii) any measures necessary to deter-  
4 mine the scope of the breach, prevent fur-  
5 ther disclosures, and restore the reasonable  
6 integrity of the data system; and

7 (iii) receipt of written notice that a  
8 law enforcement agency has determined  
9 that the notification will no longer seri-  
10 ously impede its investigation, where notifi-  
11 cation is delayed as provided in paragraph  
12 (4).

13 (B) BURDEN OF PROOF.—The agency or  
14 person required to provide notification under  
15 this subsection shall have the burden of dem-  
16 onstrating that all notifications were made as  
17 required under this paragraph, including evi-  
18 dence demonstrating the necessity of any delay.

19 (4) DELAY OF NOTIFICATION AUTHORIZED FOR  
20 LAW ENFORCEMENT PURPOSES.—If a law enforce-  
21 ment agency determines that the notification re-  
22 quired under this subsection would seriously impede  
23 a criminal investigation, such notification may be de-  
24 layed upon the written request of the law enforce-  
25 ment agency.

1           (5) EXCEPTION FOR NATIONAL SECURITY AND  
2       LAW ENFORCEMENT.—

3           (A) IN GENERAL.—This subsection shall  
4       not apply to an agency if the head of the agen-  
5       cy certifies, in writing, that notification of the  
6       breach as required by this subsection reason-  
7       ably could be expected to—

8           (i) cause damage to the national secu-  
9       rity; and

10          (ii) hinder a law enforcement inves-  
11       tigation or the ability of the agency to con-  
12       duct law enforcement investigations.

13          (B) LIMITS ON CERTIFICATIONS.—The  
14       head of an agency may not execute a certifi-  
15       cation under subparagraph (A) to—

16          (i) conceal violations of law, ineffi-  
17       ciency, or administrative error;

18          (ii) prevent embarrassment to a per-  
19       son, organization, or agency; or

20          (iii) restrain competition.

21          (C) NOTICE.—In every case in which a  
22       head of an agency issues a certification under  
23       subparagraph (A), a copy of the certification,  
24       accompanied by a concise description of the fac-

1           tual basis for the certification, shall be imme-  
2           diately provided to the Congress.

3           (6) METHODS OF NOTICE.—An agency, or per-  
4           son engaged in interstate commerce, shall be in com-  
5           pliance with this subsection if it provides the indi-  
6           vidual, with—

7                   (A) written notification;

8                   (B) e-mail notice, if the individual has con-  
9                   sented to receive such notice and the notice is  
10                  consistent with the provisions permitting elec-  
11                  tronic transmission of notices under section 101  
12                  of the Electronic Signatures in Global and Na-  
13                  tional Commerce Act (15 U.S.C. 7001); or

14                  (C) substitute notice, if—

15                   (i) the agency or person demonstrates  
16                   that the cost of providing direct notice  
17                   would exceed \$500,000;

18                   (ii) the number of individuals to be  
19                   notified exceeds 500,000; or

20                   (iii) the agency or person does not  
21                   have sufficient contact information for  
22                   those to be notified.

23           (7) CONTENT OF NOTIFICATION.—Regardless  
24           of the method by which notice is provided to individ-

1 uals under paragraphs (1) and (2), such notice shall  
2 include—

3 (A) to the extent possible, a description of  
4 the categories of information that was, or is  
5 reasonably believed to have been, acquired by  
6 an unauthorized person, including social secu-  
7 rity numbers, driver's license or State identi-  
8 fication numbers and financial data;

9 (B) a toll-free number—

10 (i) that the individual may use to con-  
11 tact the agency or person, or the agent of  
12 the agency or person; and

13 (ii) from which the individual may  
14 learn—

15 (I) what types of information the  
16 agency or person maintained about  
17 that individual or about individuals in  
18 general; and

19 (II) whether or not the agency or  
20 person maintained information about  
21 that individual; and

22 (C) the toll-free contact telephone numbers  
23 and addresses for the major credit reporting  
24 agencies.



1           (8) COORDINATION OF NOTIFICATION WITH  
2 CREDIT REPORTING AGENCIES.—If an agency or  
3 person is required to provide notification to more  
4 than 1,000 individuals under this subsection, the  
5 agency or person shall also notify, without unreason-  
6 able delay, all consumer reporting agencies that  
7 compile and maintain files on consumers on a na-  
8 tionwide basis (as defined in section 603(p) of the  
9 Fair Credit Reporting Act) of the timing and dis-  
10 tribution of the notices.

11 (b) CIVIL REMEDIES.—

12           (1) PENALTIES.—Any agency, or person en-  
13 gaged in interstate commerce, that violates sub-  
14 section (a) shall be subject to a civil money penalty  
15 of—

16               (A) not more than \$1,000 per individual  
17 whose personal information was, or is reason-  
18 ably believed to have been, acquired by an un-  
19 authorized person; or

20               (B) not more than \$50,000 per day while  
21 the failure to give notice under subsection (a)  
22 persists.

23           (2) EQUITABLE RELIEF.—Any agency or person  
24 that violates, proposes to violate, or has violated this

1 section may be enjoined from further violations by a  
2 court of competent jurisdiction.

3 (3) OTHER RIGHTS AND REMEDIES.—The  
4 rights and remedies available under this subsection  
5 are cumulative and shall not affect any other rights  
6 and remedies available under law.

7 (4) DAMAGES.—Any person injured by a viola-  
8 tion of subsection (a) may institute a civil action to  
9 recover damages arising from that violation.

10 (c) ENFORCEMENT.—The Federal Trade Commission  
11 or other appropriate regulator, may enforce compliance  
12 with this section, including the assessment of fines under  
13 subsection (b)(1).

14 (d) EXTENDED FRAUD ALERT.—Paragraph (1) of  
15 section 605A(b)(1) of the Fair Credit Reporting Act (15  
16 U.S.C. 1681c–1(b)(1)) is amended, in that portion of such  
17 paragraph that precedes subparagraph (A), by inserting  
18 “, or evidence that the consumer has received notice that  
19 the consumer’s personal financial information has or may  
20 have been compromised,” after “submits an identity theft  
21 report”.

22 **SEC. 4. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

23 (a) IN GENERAL.—

24 (1) CIVIL ACTIONS.—In any case in which the  
25 attorney general of a State has reason to believe

1       that an interest of the residents of that State has  
2       been or is threatened or adversely affected by the  
3       engagement of any person in a practice that is pro-  
4       hibited under this Act, the State, as *parens patriae*,  
5       may bring a civil action on behalf of the residents  
6       of the State in a district court of the United States  
7       of appropriate jurisdiction or any other court of  
8       competent jurisdiction to—

9               (A) enjoin that practice;

10              (B) enforce compliance with this Act;

11              (C) obtain damages, restitution, or other  
12       compensation on behalf of residents of the  
13       State; or

14              (D) obtain such other relief as the court  
15       may consider to be appropriate.

16       (2) NOTICE.—

17              (A) IN GENERAL.—Before filing an action  
18       under paragraph (1), the attorney general of  
19       the State involved shall provide to the Attorney  
20       General of the United States—

21                   (i) written notice of the action; and

22                   (ii) a copy of the complaint for the ac-  
23       tion.

24       (B) EXEMPTION.—

1 (i) IN GENERAL.—Subparagraph (A)  
2 shall not apply with respect to the filing of  
3 an action by an attorney general of a State  
4 under this subsection, if the State attorney  
5 general determines that it is not feasible to  
6 provide the notice described in such sub-  
7 paragraph before the filing of the action.

8 (ii) NOTIFICATION.—In an action de-  
9 scribed in clause (i), the attorney general  
10 of a State shall provide notice and a copy  
11 of the complaint to the Attorney General  
12 at the time the State attorney general files  
13 the action.

14 (b) CONSTRUCTION.—For purposes of bringing any  
15 civil action under subsection (a), nothing in this Act shall  
16 be construed to prevent an attorney general of a State  
17 from exercising the powers conferred on such attorney  
18 general by the laws of that State to—

- 19 (1) conduct investigations;  
20 (2) administer oaths or affirmations; or  
21 (3) compel the attendance of witnesses or the  
22 production of documentary and other evidence.

23 (c) VENUE; SERVICE OF PROCESS.—

24 (1) VENUE.—Any action brought under sub-  
25 section (a) may be brought in—

1 (A) the district court of the United States  
2 that meets applicable requirements relating to  
3 venue under section 1391 of title 28, United  
4 States Code; or

5 (B) another court of competent jurisdic-  
6 tion.

7 (2) SERVICE OF PROCESS.—In an action  
8 brought under subsection (a), process may be served  
9 in any district in which the defendant—

10 (A) is an inhabitant; or

11 (B) may be found.

12 **SEC. 5. EFFECT ON STATE LAW.**

13 The provisions of this Act shall supersede any incon-  
14 sistent provisions of law of any State or unit of local gov-  
15 ernment with respect to the conduct required by the spe-  
16 cific provisions of this Act.

17 **SEC. 6. EFFECTIVE DATE.**

18 This Act shall take effect at the end of the 6-month  
19 period beginning on the date of the enactment of this Act.

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